IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

WP(C).No. 18485 of 2007(A)

PETITIONER

K.SAJINA,W/O.SIDDIQUE, AGED 30 YEARS,
SAJINA MANZIL,KAYYATH ROAD,
THALASSERY.

BY ADV. SRI.P.M.HABEEB
SRI.V.R.NASAR

RESPONDENTS

---

1. THE THALASSERY MUNICIPALITY REP.BY
SECRETARY, THALASSERY MUNICIPALITY,
THALASSERY.

2. THE SECRETARY THALASSERY MUNICIPALITY
THALASSERY.

3. THE MUNCIPAL ENGINEER, THALASSERY
MUNICIPALITY.

4. STATE OF KERALA REPRESENTED
BY SECRETARY,LOCAL SELF GOVERNMENT,SECRETARIAT,
THIRUVANANTHAPURAM.

R1 TO R3 BY ADV. SRI.I.V.PRAMOD,S.C.
R4 BY GOVT. PLEADER MR.K.J.MOHAMMED ANSAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 18485/07)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF SKETCH AND PLAN.

EXT.P2: TRUE COPY OF PROPOSED RAIN WATER HARVESTING ARRANGEMENT PLAN.

EXT.P3: TRUE COPY OF PLAN OF SEPTIC TANK.

EXT.P4: TRUE COPY OF CONSTRUCTION DETAILS OF PROPOSED RESIDENTIAL BUILDING.

EXT.P5: TRUE COPY OF LETTER DATED 5.6.07.

PIUS C. KURIAKOSE,J.

- -

W.P.(C) No.18485 of 2007

- -

Dated: 12th September, 2007

JUDGMENT

Heard Mr.P.M.Habeeb, counsel for the petitioner and Mr.I.V.Pramod, counsel for the Thalassery Municipality.

2. My attention was drawn by the counsel for the petitioner to the interim order dated 6.10.2006 in W.P.C.No.22259 of 2006 and also to the judgments in W.P.C.Nos.18090 & 17772 of 2007. The grievance of the petitioner is that the application for a permit for construction of a residential building on her property in Survey No.TS 246, Revenue Ward No.16 of the Thiruvangad Village within the area of the Thalassery Municipality was rejected by the Municipality as per Ext.P5 on the ground that the area upon which the house is proposed to be constructed comes under the industrial zone as per a notified D.T.P.Scheme. It is contended that the scheme which was notified in early 1950s has not been implemented so far and on account of the long pendency of the scheme, the scheme has become oppressive from the point of view of the owner-citizens. My attention was also drawn to the various judgments of this court such as **G.C.D.A. v. Dr.M.Chandrasekhar** (1994(1) KLT 778), **Hassan v. Corporation of Calicut** (1996(2) KLT 839), **Beerankutty v. Municipal Commr., Manjery** (1984 KLT Sh. Notes case No. 77, page 46). I find force in

the above submissions. Counsel for the petitioner further submitted that the petitioner and her husband will be ready to submit an undertaking to the effect that in the event of any portion of the petitioner's plot being required for any industrial development scheme, they will be prepared to demolish and remove the constructions put up by them without raising any claim whatsoever for compensation provided a request in that regard comes from the Municipality within one year of the Municipality granting permit. Under these circumstances, the Writ Petition will stand disposed of quashing Ext.P5 and directing the Municipality to pass fresh orders on the application submitted by the petitioner for building permit and on the original of Ext.P1 plan provided the petitioner files an affidavit on behalf of her and also on behalf of her husband who is in abroad in which it will be stated that in the event of any portion of the building being required by the Municipality for industrial development within a period of one year of grant of permit, no claims will be made either by the petitioner or her husband for compensation. Orders should be passed without being influenced by the currency of the D.T.P.Scheme at the earliest and at any rate within one month of the petitioner producing copy of this judgment.

srd **PIUS C.KURIAKOSE, JUDGE**